PETITIONER:
RAMESH NARAIN SAXENA & ORS.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX,NEW DELHI

DATE OF JUDGMENT: 22/04/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
AHMAD SAGHIR S. (J)

CITATION:
1996 AIR 1824 JT 1996 (5) 529
1996 SCALE (3)693

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P. JEEVAN REDDY,J.

This appeal is preferred against the judgment of the Delhi High Court answering the question referred at the instance of the assessee against him. The question stated under Section 256(1) of Indian Income Tax Act, 1922 was "whether on the facts and circumstances of the case, the Tribunal was right in law in adding Rs.1,13,092/- to the total income of assessee in the accounting year ending 31-3-1961 ". The relevant assessment year is 1961-62.

The appellant- assessee was exporter of hides and skins. During the accounting year relevant to the Assessment Year 1957-58, he had pledged certain quantity of goat skins with the National Grindlay Bank. The value of the goat skins was Rs. 2,14,808/-. He had taken an over-draft against the said pledge in sum of more than Rupees tow lakhs. The Bank officers gave inspection of the said goods to third party but thereafter did not store them properly. On account of heavy monsoon, the goat skins got damaged for which the appellant claimed damages. The Bank authorities were not prepared to pay him the damages. On the contrary they called upon the assessee to replace the goat skins. The damaged The goat skins were removed by the Bank authorities to Delhi. Thereupon, the Bank. the Bank officials took the stand that by virtue of the hypothecation letter dated July 18, 1985 they were entitled to remove the goods. The learned Magistrate, however, framed the appropriate charges against the officers of the Bank. The Bank officials filed a criminal revision against the framing or charges which was dismissed by the learned Additional Sessions Judge on 19th May, 1960. At this stage, it appears that negotiation took place between the assessee and the Bank towards a settlement. On December 31,1960, the assessee wrote to the Manager of the Bank stating, "I have been maintaining an Overdraft Account with your Bank and according to you,

certain amounts are due form me on the basis of the same. On the other hand, may contention is that I have claim against the Bank, which exceeds the amount of your claim against me. I am prepared to forego and give up my claim against the Bank, if the Bank is ready to write off the amount outstanding against me". This was agreed to by the Bank. Thereupon, both the parties moved the Delhi High Court where the criminal case was pending at the time, for permission to withdraw the prosecution. a learned Single Judge of the Punjab High Court sitting at Delhi allowed the prosecution to be withdrawn and formally acquitted the accused vide his order dated January 5, 1961 pursuant to the said compromise the Bank waived the sum of Rs. 1,93,159/- which was the balance due to the Bank on the date of the High Court's order. The assessee transferred the credit balance due to the Bank to the trading account deeming it to be towards the loss sustained by him earlier as a result of the stock which were in Bombay in the custody of the Bank and offered this amount for taxation spread over the three Assessment Years 1957-58 [Rs.39,940/-], 1958-59 [Rs.73,152/-] and 1959-60 [Rs.80,940/-], The Income Tax Officer accepted the said additions and made assessment for the said three assessment years. While completing the assessment for the Assessment Years 1961-62, however, the Income Tax Officer took the view that the entire sum of Rs.1,93,159/- aforesaid should be included in that assessment year. Accordingly, he included the same. He then took rectification proceedings with respect to the earlier assessment years. He deleted the aforesaid amounts which were included in the assessments relating to Assessment Years 1957-58 and 1958-59 but did not delete the addition i the Assessment Year 1959-60. On Appeal, the Appellate Assistant Commissioner uphel the assessee's contention that the said amount of Rs.193,159/- cannot be treated as income under Section 41 (1) of the Income Tax Act, 1961 and accordingly deleted the said amount. The Income Tax Officer preferred an appeal to the tribunal. The tribunal found, after discussing the relevant facts that 'undoubtedly and admittedly the amount was a revenue receipt because the assessee admitted before the Income-tax Officer that compensation was paid for loss of goods lying at the bank's godown at Bombay.....From a perusal of the facts we are of the opinion that amount realized is a part of the consideration for wiping off the assessee's trading liability as assessee took the opportunity for wiping off liabilities by filing a criminal case against the bank. The criminal case against the bank employees would not alter the real character of the goods which were nothing but the stock of goods of assessee. We find that a sum of Rs.2,13,092/- out of the provisions of section 41(1) of the Act, this amount could be brought to tax during the accounting year". Accordingly, Revenue's appeal was allowed. Thereupon, the assessee applied for and obtained reference of the aforesaid question for the opinion of the High Court under Section 256(1) of the Act.

When matter came up before the High Court, the High Court agreed with the assessee, in the first instance that Section 41(1) was not attracted to the facts of the case. Then it proceeded to observe:

> ".....It is clear that the payment received by the assessee (by way of adjustment) was by way of compensation for loss or damage to the assessee's stock-in-trade viz., hides and skins. The accounts of the assessee for these years are

> not before us but it is clear from the narration that the balance due to the banker were adjusted against the write off the stokes damaged and hence returned for assessment in earlier years. The loss and damage had taken place in the earlier years and payment which was received in accounting year ending 31.3.1961 was assessable in assessment year 1961-62.....The resultant position, therefore, is that the losses to the exxtent of Rs. 1,13,052/- had been allowed of accounting year 1960-61 was liable to tax under Section 41(1) ..... Even otherwise the compensation received being in respect of stock-in-trade would be a trading receipt and so assessable to tax irrespective of whether the assessee had claimed or omitted to claim the loss or damage to the stock-in-trade as and when it occurred, as he should have done."

On the above reasoning, the High Court answered the question referred to it in favour of the Revenue and against the assessee.

Sri Mistry learned counsel for the appellant, submitted that the High Court having rightly held, in the first instance, that Section 41(1) is not attracted in the facts and circumstances of the case, erred in bringing in Section 41(1) later to justify the inclusion of the said amount [Rs.1,13,052/-]. Counsel submitted that the said amount cannot be treated as the income of the assessee under any provision of the Act. We have set out hereinbefore the relevant portion from the judjment of the High Court. We are of opinion that the decision of the High Court is not really based upon Secton 41(1), the said amount is liable to be included in the assessment relating to Assessment Year 1961-62 for the reason that the amount so received represented compensation in respect of his stock-in-trade and, therefore, it constitutes a trading receipt and is accordingly assessable to tax irrespective of the fact whether the assessee had or had not claimed the loss of damage to stock-in-trade, as and when it occurred. The main basis of the judgment of the High Court is that is was compensation for loss or damage to the assessee's stock-in-trade - and not Section 41(1). Indeed, this was also the finding of the Tribunal, as would be evident form the relevant extracts form its judgment set out hereinabove. Sri Ministry did not dispute the fact that if the said amount is treated as compensation received in respect of stock-in-trade it would be a trading receipt and accordingly assessable to tax.

We see no reason to interfere with the answer given by the High Court to the question stated. The appeal is dismissed but there shall be no order to costs.